bad habits, that such warranty had been broken and that the defendants had suffered damages to the full amount of the plaintiffs' claim.

Plaintiffs claimed that evidence to prove such defence could not be admitted to contradict or add to the written contract on which they relied.

Held, that the lien note had been given simply for the purpose of securing payment to the plaintiffs and it was not intended to include in writing all the terms of the agreement between the parties, and that evidence to prove the alleged warranty and the breach of it was admissible. *De Lasalle* v. *Guildford* (1901) 2 K.B. 215, and *Erskine* v. *Adeane*, L.R. 8 Ch. 756, followed.

The judge, having found on the facts in favour of the defendants, allowed them $265 as damages for the breach of warranty, and gave plaintiffs the option of taking judgment for the balance, without costs, or of accepting defendants' offer to return the horses on the cancellation of the lien note.

The defendants having kept the horses for a considerable time and made a payment on account, it was held that the contract must be treated as executed and that any representation or condition as to the quality of the goods must now be regarded only as a warranty, for the breach of which compensation must be sought in damages and not by rescission of the contract.

Haggart, K.C., and *Sullivan*, for plaintiffs. *Hoskin*, for defendants.

Province of British Columbia.

SUPREME COURT.

Full Court.] [Jan. 25.

STONE *v.* ROSSLAND ICE & FUEL CO.

Promissory notes—Extension of time for payment—Release of co-maker—Surety—Notice—Collateral security—Credit for sums realized—Appeal—Ground not distinctly raised at trial—Question of fact.

D. who was with others jointly indebted to the plaintiff on certain promissory notes in relation to the transfer of a business as a going concern, did not in his pleadings, nor at the trial, until